

1 IN THE SUPREME COURT OF THE STATE OF ARIZONA

2 In Banc

3 FARMERS INVESTMENT COMPANY,  
4 a corporation,

5 Appellant,

6 -vs-

7 ANDREW L. BETTWY, as State Land  
8 Commissioner, and the STATE LAND  
9 DEPARTMENT, a Department of the  
10 State of Arizona, and PIMA MINING  
11 COMPANY, a corporation,

12 Appellees.

13 FARMERS INVESTMENT COMPANY,  
14 a corporation,

15 Appellant,

16 -vs-

17 THE ANACONDA COMPANY, a corporation;  
18 AMAX COPPER MINES, INC., THE ANACONDA  
19 COMPANY as partners in and constituting  
20 ANAMAX MINING COMPANY, a partnership,

21 Appellees.

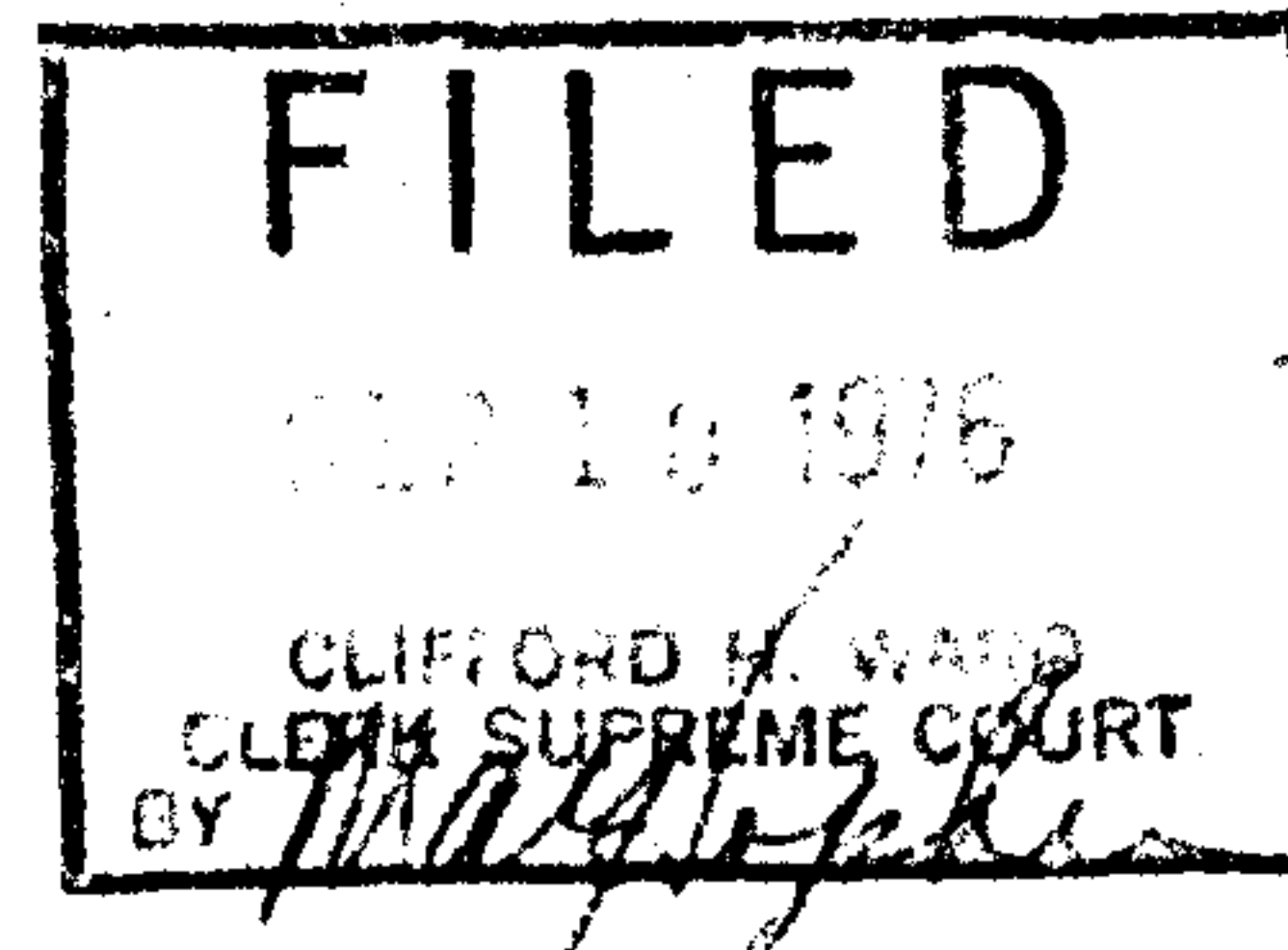
22 CITY OF TUCSON, a municipal  
23 corporation,

24 Appellant,

25 -vs-

26 ANAMAX MINING COMPANY, and DUVAL  
27 CORPORATION and DUVAL SIERRITA  
28 CORPORATION,

Appellees.



NO. 11439-2

PETITION FOR LEAVE  
TO FILE BRIEF AS  
AMICI CURIAE AND MEMORANDUM  
IN SUPPORT THEREOF

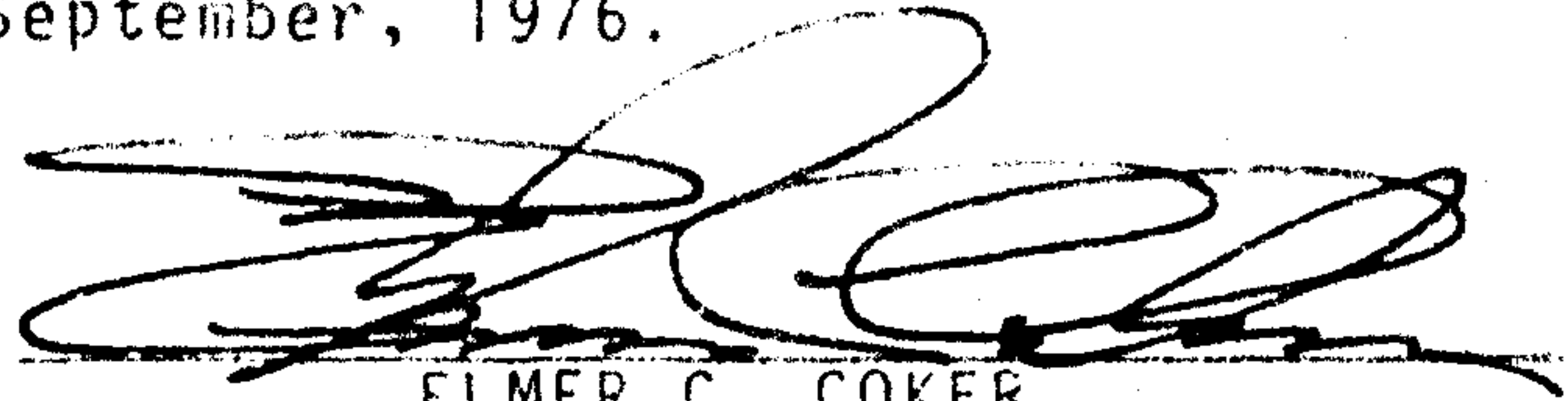
W. W. JARVIS, et al.,  
PETITIONERS

COME NOW W. W. JARVIS and others, Petitioners in Cause No.  
11439-2 before this Honorable Court, by and through their undersigned  
attorney, and respectfully request permission of this Court to file

1 as *amici curiae* a brief in the above-entitled cause within thirty  
2 (30) days after the filing of this Petition, or such other time as  
3 the Court may order.

4 A memorandum is filed herewith in support of this Petition.

5 DATED this 10th day of September, 1976.

6  
7 

ELMER C. COKER

8 Luhrs-Central Building, Suite J  
9 132 South Central Avenue  
Phoenix, Arizona, 85004

10 Attorney for Petitioners

11  
12 MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO FILE  
13 BRIEF AS AMICI CURIAE

14 Considerable apprehension exists in the minds of petitioners  
15 that the majority opinion may have some affect on petitioners' rights  
16 in the Avra Valley heretofore declared vested property rights by this  
17 Court in the three Jarvis decisions, *infra*, particularly the language  
18 in the decision which suggests legislation. JARVIS, et al, feel  
19 therefore that the decision could be clarified to clearly indicate:

20 (1) That the decisions of this Court in Jarvis I, Jarvis II,  
21 and Jarvis III, respectively, 104 Ariz. 527, 456 P. 2d 385; 106 Ariz.  
22 506, 479 P. 2d 169; and \_\_\_\_\_ Ariz. \_\_\_\_\_, 550 P. 2d 227, respectively  
23 are in no manner affected by the decision in this cause and that legis-  
24 lation, if any, is not required nor necessary to ratify the Jarvis  
25 Decisions of this Court, or to continue in full force and effect the  
26 injunction heretofore issued and modified by this Court.

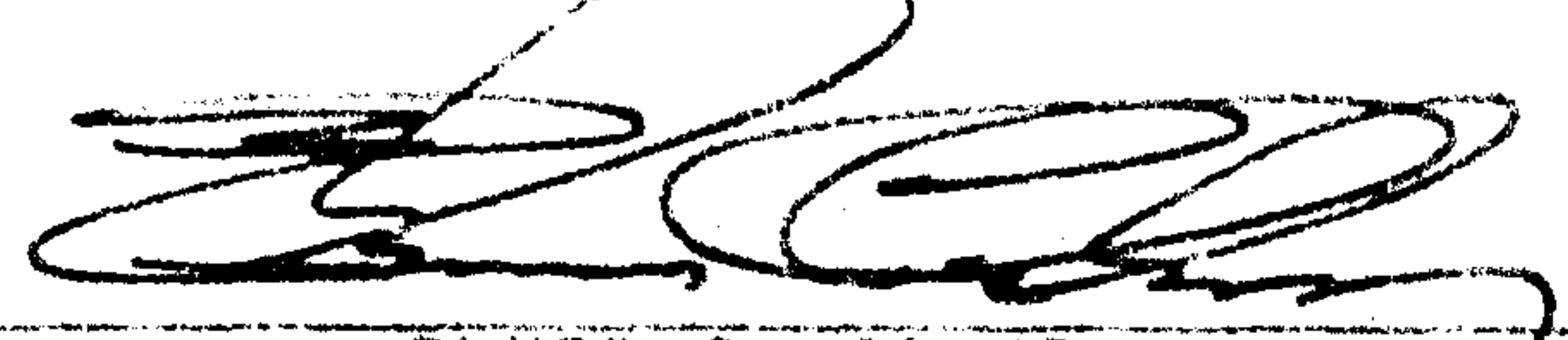
27 (2) Petitioners are also concerned as to whether or not  
28 the rule stated by this Court in *State v. Anway*, 87 Ariz. 206, 349 P.

1 2d 774 authorizing the change in place of use of irrigated lands from  
2 a well has been affected by this decision and would request the Court  
3 to more clearly define: "On the land wellsites" and "Off the land  
4 use" in view of *Anway* and of course *Jarvis*.

5 These petitioners completely support the rule of property  
6 announced in *Briston v. Cheatham*, 75 Ariz. 227, 255 P. 2d 173, and in  
7 the *Jarvis* decisions.

8 Their apprehension, however, is supported by the fact that  
9 although the Court states in its decision that the mining companies  
10 have purchased and retired farm lands within the critical groundwater  
11 area and groundwater basin for the purpose of pumping and transporting  
12 water therefrom, no statement is made by the Court that the rule in  
13 *Jarvis II*, *supra*, would or would not apply to them, nor was there any  
14 mention made in the case involving Tucson that, as in *Jarvis II* it could  
15 purchase lands previously in cultivation, retire the same from culti-  
16 vation and pump and transport the waters thereof outside the critical  
17 area and basin "an amount equal to the annual historical maximum use  
18 upon the land so acquired" as later defined in *Jarvis III*, *supra*.

19  
20 Respectfully submitted,

21 

22 ELMER C. COKER  
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25 Attorney for Petitioners

26 ---

27 ---

28 ---



COPIES of the foregoing Petition and Memorandum In Support  
mailed this 10th day of September, 1976, to:

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STATE OF ARIZONA )  
 )  
COUNTY OF MARICOPA )

ss:

I Antonio Bucci hereby certify:  
Name

That I am Reference Librarian, Law & Research Library Division of the Arizona State  
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:  
**Arizona Supreme Court, Civil Cases on microfilm, Film #36.1.764, Case #11439-2, Supreme Court  
Instruments, Part One, Petition for Leave to File Brief as Amici Curiae and Memorandum in Support  
Thereof, pages 328-331 (4 pages)**

The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s)  
on file.

Antonio Bucci  
Signature

Subscribed and sworn to before me this 12/12/05  
Date

Etta Louise Muir  
Signature, Notary Public

My commission expires 04/13/2009  
Date

